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In the Supreme Court of the United States

OCTOBER TERM, 1965.

No. 549.

EDWARD KEELING,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

OBJECTIONS TO JURISDICTION.

There is no substantial federal question involved which would require this Court to review this case.

The questions herein presented were raised in the Court of Appeals for the Eighth Appellate District of Ohio and in the Ohio Supreme Court. The Court of Appeals affirmed without writing an opinion and the Ohio Supreme Court refused to certify and review.

The Ohio courts decided this case in accordance with the statutes of the State of Ohio, and in accordance with the Constitution of the United States and applicable decisions of this Court. The decisions of the state court were based on state law. There is therefore no substantial federal question involved.

QUESTION PRESENTED.

Petitioner claims he was deprived of his liberty without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States in that (1) the trial court erred in instructing the jury on the law of entrapment, (2) the Ohio appellate court did not render an opinion setting forth the court's reasons for affirming the judgment of the trial court.

THE STATE'S EVIDENCE.

In April 1963 Detective Bosie Mack was assigned to the Narcotics Unit of the Cleveland Police Department. Pursuant to his official duties, Mack, along with other officers, arrested one Albert Hawkins for a narcotics violation. Subsequently Hawkins was charged with selling narcotics, a felony.

It is not disputed that on April 18, 1964, shortly after Hawkins was arrested, Edward "Bud" Keeling, the petitioner herein, called Detective Bosie Mack at Central Police Station. Keeling was known to the Narcotics Unit and to the police department in general as a clearinghouse operator and a member of the underworld. He admitted on cross-examination that he was twice convicted of burglary and that he is a clearinghouse operator. Detective Mack described his conversation with Keeling in the following at R. 14:

> "At that time he asked me if he could talk to me, and I told him yes. I asked him what did he want to talk about. He said, 'Al Hawkins.' I said 'What about him?' He said, 'I want to know if I can do him some good.'
>
> "At that point I told him to hold it, I would call him back, to give me a number, to give me a number where he was at, and I would call him back."

A little later they talked again, and the detective described what happened then in the following at R. 16:

> "Then he said, then Mr. Keeling asked me if he could do him any good, and I said, 'Like how?' He said, 'Like get some money and get him out.'
>
> "Then I asked him if he wanted to get him out on bond. I said, 'You can get him out on bond.' He said, 'No, I want to get him out of this mess,' he said."

The first mention of money was in that same conversation (R. 18). "He then stated to me that he had $500.00. He said, 'I am not making any money now, but I have $500.00 that I can lay my hands on.' "

There was another conversation the next day between Detective Mack and Keeling, which the detective related in the following at R. 26:

> "He asked me if anything could be done, and again I said, 'I don't know.' So then Mr. Keeling said, 'Well, look, I have got $500.00. That is all the money I have in the world, and I will turn this money loose if I can get the man back on the street. I want him on the street.'
>
> "At that point I asked him again what did he expect for his money, and he says, 'Just put Albert Hawkins out on the street free and clear.' "

At this point it is apparent that if and when any money passed, it was for the purpose of influencing Detective Mack to corruptly release a prisoner in custody for a narcotics violation solely in consideration of a payment of money by Keeling. The detective testified:

> "He stated he wanted Mr. Hawkins cut out, no indictments, no prosecution, nothing, just out on the street, free and clear, and that he was—and that Hawkins was going to be messing around, so he asked that we didn't bust him until after he got his money back."

In connection with narcotics "messing around" usually means a person either selling or using narcotics. A "bust" is an arrest.

At R. 286, under cross-examination, the defendant substantiated the detective's testimony that the money did pass from him to the detective.

> "Q. That is the way you had that money assorted, in fifty and one hundred dollar bills?
>
> A. Let me see. Yes, that is right. I guess—I don't know. It's been so long since I seen it.
>
> Q. What did you have that money saved up for?
>
> A. Fix my house."

The money changed hands on April 19th at about noon, following another phone conversation between Detective Mack and Keeling in which it was arranged that they should meet at an appointed spot in Woodhill Park in Cleveland. Keeling said he did not have the money with him but would go home to get it. He left and returned in a few minutes, after which he stated his terms to the detective as above quoted, then handed the detective a wad of folded bills, which the detective put in his left pocket. At that point other officers who had the transaction under surveillance appeared and arrested Keeling.

Of importance in this case is the statement of Keeling (St. Ex. 24 and 24A), part of it in narrative form and part consisting of questions and answers. The narrative portion relates that mention of money was initiated by the defendant:

> "* * * I told him, 'I know that it's gonna take some money, I got five hundred dollars.' He asked me where I was at and then he said, 'I'll call you back.' "

ARGUMENT.

The petition for a writ of certiorari sets forth a number of questions presented for review, which can be summarized as follows: (1) Error in the charge of the trial court on the law of entrapment; (2) that the petitioner's constitutional rights were violated when both the Court of Appeals for the Eighth Appellate District of Ohio and the Supreme Court of Ohio affirmed the judgment of the trial court without rendering any opinion giving the reason for such affirmance.

(1) The question of entrapment as a defense to a charge of crime in a state court is a matter of law, to be determined by the law of the state on that subject. This is purely a legal question, involving the legal definition of a legal term. In this case the question was reviewed by both the appellate court and the Supreme Court of Ohio and the court's charge on entrapment was found to be consistent with the Ohio law and the decisions of the federal courts. The petitioner herein declares that the determination of the Ohio courts on the law of entrapment constitutes a violation of petitioner's constitutional rights. Under our federal regime, state courts, state agencies, and state legislatures are the final expositors of state law. *Brady v. Maryland,* 373 U. S. 83, 10 L. ed. 2d 215, 83 S. Ct. 1194. This is not a proper subject for review by this Court for the reason that no constitutional or federal question is presented.

(2) The petitioner's claim of violation of his constitutional rights by reason of the failure of either the appellate court or the Ohio Supreme Court to render an opinion when reviewing this case has no foundation or support whatever. We are unable to find any case that requires every reviewing court to write a full and complete opinion

in every case presented to it for review. Moreover, this is a matter of state procedural law and presents no federal or constitutional issue whatever.

There is neither any substantial federal question nor any debatable constitutional question involved in either of the petitioner's claims of error. This Court has many times held that a real and not a fictitious Federal question is essential to the jurisdiction of the Supreme Court of the United States over the judgments of state courts.

Caldwell v. Texas, 137 U. S. 692, 11 S. Ct. 224;
Hamblin v. Western Land Co., 147 U. S. 571, 13 S. Ct. 353;
St. Louis G. & F. S. R. Co. v. Missouri, 156 U. S. 478, 15 S. Ct. 443;
Charles v. McDacie, 165 U. S. 168, 17 S. Ct. 284;
Iowa v. Rood, 187 U. S. 87, 23 S. Ct. 49;
Illinois C. R. Co. v. Chicago, 176 U. S. 646, 20 S. Ct. 509;
Equitable L. Assur. Soc. v. Brown, 187 U. S. 308, 23 S. Ct. 123.

The mere averment of a Federal question is not sufficient to give the Federal Supreme Court jurisdiction of a writ of error to a state court, but a real question is essential. *Sawyer v. Piper,* 189 U. S. 154, 23 S. Ct. 633. Something more than a bare assertion that an authority is exercised under the United States is essential to the jurisdiction of this Court. *Millingar v. Hartupec,* 6 Wall. 258. It is stated in 54 *American Jurisprudence,* at p. 886, that the United States Supreme Court is without jurisdiction on certiorari to review holdings of the state court which concern matters of state law and amount at most to alleged erroneous constructions of statutes of a state by its own

courts, citing *Neblett v. Carpenter*, 305 U. S. 297, 59 S. Ct. 170.

In summary, due process was not denied this petitioner. He has not raised any substantial federal question that would require this Court to review this case. The questions herein presented were raised in both the Court of Appeals for the Eighth Appellate District of Ohio and in the Supreme Court of Ohio. The Court of Appeals affirmed the judgment of the trial court. The Ohio Supreme Court refused to certify and review. The decisions of the state courts were based on the applicable state law. There is, therefore, no substantial federal question involved. Consequently this Court has no jurisdiction to review this case and the petition for a writ of certiorari should be denied.

Respectfully submitted,

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END